

AMENDED IN SENATE JUNE 17, 2002

AMENDED IN SENATE APRIL 25, 2002

AMENDED IN ASSEMBLY JANUARY 7, 2002

AMENDED IN ASSEMBLY APRIL 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 264**

**Introduced by Assembly Member Correa**

February 16, 2001

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An act to amend Sections 7071.11, 7125, and 7125.2 of, to add Sections 7125.3 and 7125.4 to, and to repeal and add Section 7065.01 of, the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 264, as amended, Correa. Contractors.

The Contractors State License Law provides for the licensing and regulation of contractors by the Contractors' State License Board, including specialty contractors.

This bill would provide that a trade examination shall not be required for the limited specialty license classification.

Existing law requires the surety of a contractor to notify the Registrar of Contractors of any payment on any claim against the contractor's bond within 30 days of making the payment. Existing law, with specified exceptions, provides that any judgment or admitted claim against, or good faith payment from, a bond shall constitute grounds for disciplinary action against a contractor by the Contractors' State License Board.

This bill would provide that, prior to a settlement of a claim through a good faith payment by the surety, the contractor shall have not less than 15 days to file a written protest instructing the surety not to make the payment based on certain specific grounds. The bill would require the board to investigate the matter for disciplinary violations when a licensee files a written protest and a surety has suffered a loss regarding its good faith payment.

This bill, with respect to payments made by a surety that are reported to the Registrar of Contractors, would provide that the contractor's license shall be suspended by operation of law if proof of payment of the amount owed to the surety has not been made by the contractor within 90 days after the contractor is notified to that effect by the Contractors' State License Board. This bill would also provide that a contractor's license may not be renewed, reissued, or reinstated while any judgment or admitted claim in excess of the amount of the contractor's bond remains unsatisfied or while the surety remains unreimbursed for loss and expense sustained on the bond.

Existing law generally requires an applicant for a contractors' license or a licensee to have on file with the board a Certificate of Workers' Compensation Insurance or a Certification of Self-Insurance. Existing law provides that failure of a licensee to comply with this requirement shall result in the automatic suspension of the license by operation of law, and specifies various procedures in this regard.

This bill would revise and recast these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 7065.01 of the Business and Professions
- 2 Code is repealed.
- 3 SEC. 2. Section 7065.01 is added to the Business and
- 4 Professions Code, to read:
- 5 7065.01. Notwithstanding Section 7065, no trade
- 6 examination shall be required of an applicant for the limited
- 7 specialty license classification.
- 8 SEC. 3. Section 7071.11 of the Business and Professions
- 9 Code is amended to read:
- 10 7071.11. (a) A copy of the complaint in a civil action
- 11 commenced by a person claiming against a bond required by this



1 article shall be served by registered or certified mail upon the  
2 registrar by the clerk of the court at the time the action is  
3 commenced and the registrar shall maintain a record, available for  
4 public inspection, of all actions so commenced. The aggregate  
5 liability of a surety on a claim for wages and fringe benefits  
6 brought against any bond required by this article, other than a bond  
7 required by Section 7071.8, shall not exceed the sum of four  
8 thousand dollars (\$4,000). If any bond which may be required is  
9 insufficient to pay all claims in full, the sum of the bond shall be  
10 distributed to all claimants in proportion to the amount of their  
11 respective claims. Any action, other than an action to recover  
12 wages or fringe benefits, against a contractor's bond or a bond of  
13 a qualifying individual filed by an active licensee shall be brought  
14 within two years after the expiration of the license period during  
15 which the act or omission occurred, or within two years of the date  
16 the license of the active licensee was inactivated, canceled, or  
17 revoked by the board, whichever first occurs. Any action, other  
18 than an action to recover wages or fringe benefits, against a  
19 disciplinary bond filed by an active licensee pursuant to Section  
20 7071.8 shall be brought within two years after the expiration of the  
21 license period during which the act or omission occurred, or within  
22 two years of the date the license of the active licensee was  
23 inactivated, canceled, or revoked by the board, or within two years  
24 after the last date for which a disciplinary bond filed pursuant to  
25 Section 7071.8 was required, whichever date is first. A claim to  
26 recover wages or fringe benefits shall be brought within six  
27 months from the date that the wage or fringe benefit delinquencies  
28 were discovered, but in no event shall a civil action thereon be  
29 brought later than two years from the date the wage or fringe  
30 benefit contributions were due.

31 (b) Whenever the surety makes payment on any claim against  
32 a bond required by this article, whether or not payment is made  
33 through a court action or otherwise, the surety shall, within 30 days  
34 of the payment, provide notice to the registrar. The notice required  
35 by this subdivision shall provide the following information by  
36 declaration on a form prescribed by the registrar:

- 37 (1) The name and license number of the contractor.
- 38 (2) The surety bond number.
- 39 (3) The amount of payment.
- 40 (4) The statutory basis upon which the claim is made.

1 (5) The names of the person or persons to whom payments have  
2 been made.

3 (6) Whether or not the payments were the result of a good faith  
4 action by the surety.

5 The notice shall also clearly indicate whether or not the licensee  
6 filed a protest in accordance with this section.

7 (c) Prior to the settlement of a claim through a good faith  
8 payment by the surety, a licensee shall have not less than 15 days  
9 in which to provide a written protest. This protest shall instruct the  
10 surety not to make payment from the bond on the licensee's  
11 account upon the specific grounds that the claim is opposed by the  
12 licensee, and provide the surety a specific and reasonable basis for  
13 the licensee's opposition to payment.

14 (1) Whenever a licensee files a protest in accordance with this  
15 subdivision, the board shall investigate the matter and file  
16 disciplinary action as set forth under this chapter if there is  
17 evidence that the surety has sustained a loss as the result of a good  
18 faith payment made for the purpose of mitigating any damages  
19 incurred by any person or entity covered under Section 7071.5.

20 (2) Any licensee that fails to file a protest as specified in this  
21 subdivision shall have 90 days from the date of notification by the  
22 board to submit proof of payment of the actual amount owed to the  
23 surety and, if applicable, proof of payment of any judgement or  
24 admitted claim in excess of the amount of the bond or, by operation  
25 of law, the license shall be suspended at the end of the 90 days. A  
26 license suspension pursuant to this subdivision shall be disclosed  
27 indefinitely as a failure to settle outstanding final liabilities in  
28 violation of this chapter. The disclosure specified by this  
29 subdivision shall also be applicable to all licenses covered by the  
30 provisions of subdivision (d).

31 (d) No license may be renewed, reissued, or reinstated while  
32 any judgment or admitted claim in excess of the amount of the  
33 bond remains unsatisfied. Further, no license may be renewed,  
34 reissued, or reinstated while any surety remains unreimbursed for  
35 any loss or expense sustained on any bond issued for the licensee  
36 or for any entity of which any officer, director, member, partner,  
37 or qualifying person was an officer, director, member, partner, or  
38 qualifying person of the licensee while the licensee was subject to  
39 suspension or disciplinary action under this section.



1 (e) The licensee may provide the board with a notarized copy  
2 of an accord, reached with the surety to satisfy the debt in lieu of  
3 full payment. By operation of law, failure to abide by the accord  
4 shall result in the automatic suspension of any license to which this  
5 section applies. A license that is suspended for failure to abide by  
6 the accord may only be renewed or reinstated when proof of  
7 satisfaction of all debts is made.

8 (f) Legal fees may not be charged against the bond by the board.

9 (g) In any case in which a claim is filed against a deposit given  
10 in lieu of a bond by any employee or by an employee organization  
11 on behalf of an employee, concerning wages or fringe benefits  
12 based upon the employee's employment, claims for the  
13 nonpayment shall be filed with the Labor Commissioner. The  
14 Labor Commissioner shall, pursuant to the authority vested by  
15 Section 96.5 of the Labor Code, conduct hearings to determine  
16 whether or not the wages or fringe benefits should be paid to the  
17 complainant. Upon a finding by the commissioner that the wages  
18 or fringe benefits should be paid to the complainant, the  
19 commissioner shall notify the registrar of the findings. The  
20 registrar shall not make payment from the deposit on the basis of  
21 findings by the commissioner for a period of 10 days following  
22 determination of the findings. If, within the period, the  
23 complainant or the contractor files written notice with the registrar  
24 and the commissioner of an intention to seek judicial review of the  
25 findings pursuant to Section 11523 of the Government Code, the  
26 registrar shall not make payment, if an action is actually filed,  
27 except as determined by the court. If, thereafter, no action is filed  
28 within 60 days following determination of findings by the  
29 commissioner, the registrar shall make payment from the deposit  
30 to the complainant.

31 (h) Any action, other than an action to recover wages or fringe  
32 benefits, against a deposit given in lieu of a contractor's bond or  
33 bond of a qualifying individual filed by an active licensee shall be  
34 brought within three years after the expiration of the license period  
35 during which the act or omission occurred, or within three years  
36 after the date the license was inactivated, canceled, or revoked by  
37 the board, whichever first occurs. Any action, other than an action  
38 to recover wages or fringe benefits, against a deposit given in lieu  
39 of a disciplinary bond filed by an active licensee pursuant to  
40 Section 7071.8 shall be brought within three years after the

1 expiration of the license period during which the act or omission  
2 occurred, or within three years of the date the license of the active  
3 licensee was inactivated, canceled, or revoked by the board, or  
4 within three years after the last date for which a deposit given in  
5 lieu of a disciplinary bond filed pursuant to Section 7071.8 was  
6 required, whichever date is first. If the board is notified of a  
7 complaint relative to a claim against the deposit, the deposit shall  
8 not be released until the complaint has been adjudicated.

9 SEC. 4. Section 7125 of the Business and Professions Code  
10 is amended to read:

11 7125. (a) The board shall require as a condition precedent to  
12 the issuance, reinstatement, reactivation, renewal, or continued  
13 maintenance of a license, that the applicant or licensee have on file  
14 at all times a current and valid Certificate of Workers'  
15 Compensation Insurance or Certification of Self-Insurance. A  
16 Certificate of Workers' Compensation Insurance shall be issued  
17 and filed, electronically or otherwise, by one or more insurers duly  
18 licensed to write workers' compensation insurance in this state. A  
19 Certification of Self-Insurance shall be issued and filed by the  
20 Director of Industrial Relations. If reciprocity conditions exist, as  
21 defined in Section 3600.5 of the Labor Code, the registrar shall  
22 require the information deemed necessary to assure compliance  
23 with this section.

24 (b) This section does not apply to an applicant or licensee who  
25 has no employees provided that he or she files a statement with the  
26 board on a form prescribed by the registrar prior to the issuance,  
27 reinstatement, reactivation, or continued maintenance of a license,  
28 certifying that he or she does not employ any person in any manner  
29 so as to become subject to the workers' compensation laws of  
30 California or is not otherwise required to provide for workers'  
31 compensation insurance coverage under California law.

32 (c) No certificate of workers' compensation insurance,  
33 certification of self-insurance, or exemption-certificate is required  
34 of a holder of a license that has been inactivated on the official  
35 records of the board during the period the license is inactive.

36 (d) The insurer, including the State Compensation Insurance  
37 Fund, shall report to the registrar the following information for any  
38 policy required under this section: name, license number, policy  
39 number, dates that coverage is scheduled to commence and lapse,  
40 and cancellation date if applicable.

SEC. 5. Section 7125.2 of the Business and Professions Code is amended to read:

7125.2. The failure of a licensee to obtain or maintain workers' compensation insurance coverage, if required under this chapter, shall result in the automatic suspension of the license by operation of law in accordance with the provisions of this section, *but this suspension shall not affect, alter, or limit the status of the licensee as an employer for purposes of Section 3716 of the Labor Code.*

(a) The license suspension imposed by this section is effective ~~in accordance with~~ *upon the earlier of* either of the following:

(1) On the date that the relevant workers' compensation insurance coverage lapses.

(2) On the date that workers' compensation coverage is required to be obtained.

(b) A licensee who is subject to suspension under paragraph (1) of subdivision (a) shall be provided a notice by the registrar that includes all of the following:

(1) The reason for the license suspension and the effective date.

(2) A statement informing the licensee that a pending suspension will be posted to the license record for not more than 45 days prior to the posting of any license suspension periods required under this article.

(3) The procedures required to reinstate the license.

(c) Reinstatement may be made at any time following the suspension by showing proof of compliance as specified in Sections 7125 and 7125.1.

(d) ~~With~~ *In addition, with* respect to an unlicensed individual acting in the capacity of a contractor who is not otherwise exempted from the provisions of this chapter, a citation may be issued by the registrar under Section 7028.7 for failure to comply with this article and to maintain workers' compensation insurance. An opportunity for a hearing as specified in Section 7028.10 will be granted if requested within 15 working days after service of the citation.

SEC. 6. Section 7125.3 is added to the Business and Professions Code, to read:

7125.3. A contractor shall be considered duly licensed during all periods in which the registrar is required to accept the certificate

1 prescribed by Section 7125, provided the licensee has otherwise  
2 complied with the provisions of this chapter.

3 SEC. 7. Section 7125.4 is added to the Business and  
4 Professions Code, to read:

5 7125.4. The filing of statement or exemption certificate  
6 prescribed by this article that is false, or the employment of a  
7 person subject to coverage under the workers' compensation laws  
8 after the filing of an exemption certificate without first filing a  
9 Certificate of Workers' Compensation Insurance or Certification  
10 of Self-Insurance in accordance with the provisions of this article,  
11 or the employment of a person subject to coverage under the  
12 workers' compensation laws without maintaining coverage for  
13 that person, constitutes cause for disciplinary action.

